

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6735 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

MANILAL JOITARAM PANCHAL

Versus

COLLECTOR, SABARKANTHA & ORS.

Appearance:

Shri S.H. Sanjanwala, Advocate, for the
Petitioner

Shri T.H. Sompura, Asst. Govt. Pleader, for the
Respondents

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 24/07/96

ORAL JUDGEMENT

The show-cause notice issued by the Collector of

Sabarkantha at Himatnagar (respondent No. 1 herein) on 11th November 1987 under sec. 211 of the Bombay Land Revenue Code, 1879 (the Code for brief) is under challenge in this petition under art. 226 of the Constitution of India. By his show-cause notice, respondent No. 1 has directed the petitioner to show cause why the order passed by the Mamlatdar at Idar (respondent No. 3 herein) on 5th June 1987 under sec. 37(2) thereof should not be revised. By the aforesaid order passed by respondent No. 3, one house bearing No. 128 together with the land appurtenant thereto to the tune of 9873.05 square feet situated at village Barvav taluka Idar (the disputed property for convenience) was held to be of the ownership of the petitioner.

2. It is not necessary to set out in detail the facts giving rise to this petition. It may be sufficient to note that respondent No. 3 held the inquiry under sec. 37(2) of the Code with respect to the disputed property. By his order passed on 5th June 1987, respondent No. 3 held the disputed property to be of the ownership of the petitioner. Its copy is at Annexure A to this petition. The necessary notice in that regard was also served to the petitioner. Its copy is at Annexure B to this petition. It appears to have come to the notice of respondent No. 1. He appears to have found it not according to law. Its suo motu revision under sec. 211 of the Code was therefore contemplated. A show-cause notice thereupon came to be issued on 12th November 1987 calling upon the petitioner to show cause why the order at Annexure A to this petition should not be revised under sec. 211 of the Code. Its copy is at Annexure C to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under art. 226 of the Constitution of India.

3. As rightly submitted by learned Advocate Shri Sanjanwala for the petitioner, respondent No. 3 in conducting the inquiry under sec. 37(2) of the Code was exercising powers of the Collector and that order could not have been taken in revision under sec. 211 of the Code in view of the Division Bench ruling of this Court in the case of Dallumiya Lalmiya Malek v. State of Gujarat reported in (1971) 12 G.L.R. 668. In view of the aforesaid Division Bench ruling of this Court, respondent No. 1 does not have any authority, power or jurisdiction to revise the order at Annexure A to this petition under sec. 211 of the Code.

4. Learned Assistant Government Pleader Shri Sompura for the respondents has submitted that this Court need

not and should not interfere with the show-cause notice in this petition at this stage. It has been urged that it would be open to the petitioner to point out to respondent No. 1 in reply to the show-cause notice that the exercise of powers under sec. 211 of the Code qua the order at Annexure A to this petition was without any authority, power or jurisdiction in view of the aforesaid binding Division Bench ruling of this Court. In this connection, a reference deserves to be made to the unreported ruling of this Court in Special Civil Application No. 1979 of 1978 decided on 9th July 1984 as relied on by learned Advocate Shri Sanjanwala for the petitioner. In that case, in the inquiry under sec. 37(2) of the Code the concerned Mamlatdar found that the person concerned had made encroachment on the government land upto 51 acres 14 gunthas and it was found that the encroachment was not mala fide and thereupon not a very heavy penalty was imposed. That order was sought to be revised by the Deputy Collector under sec. 211 of the Code by issuing one show-cause notice on 5th July 1978. 1978. Relying on the aforesaid Division Bench ruling of this Court, this Court in Special Civil Application No. 1979 of 1978 decided on 9th July 1984 quashed the show-cause notice on the ground that the order under sec. 37(2) of the Code passed by the Mamlatdar was not revisable by the Deputy Collector. In that case also, the Court interfered at the stage of the show-cause notice.

5. Sitting as a single Judge, the aforesaid unreported ruling of this Court is binding to me. Even otherwise, I am in respectful agreement therewith. It is on all fours applicable in the present case. Respondent No. 1 has no power, authority or jurisdiction to revise the order at Annexure A to this petition under sec. 211 of the Code. The show-cause notice at Annexure C to this petition is therefore without competence. It has to be quashed and set aside.

6. In the result, this petition is accepted. The show-cause notice issued by the Collector of Sabarkantha at Himatnagar on 12th November 1987 at Annexure C to this petition is quashed and set aside. Rule is accordingly made absolute with no order as to costs.
